

CIVIL PROCEDURE CODE AMENDMENT BILL.

Section III.

Mr. Kunhiraman Nair.—I beg to propose that the word “time” be inserted between “words” and “a time to be fixed”. The object is to make the definition one of general application throughout the Code.

Seconded by Mr. Nagam Aiya.

Carried.

Section VII.

Mr. Kunhiraman Nair.—I beg to propose that the words “para 4” be added after “section 39”. This is a purely verbal amendment.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section XVI.

Mr. Kunhiraman Nair.—I beg to propose that in clause 3, of this section, line 4, the words “to be” be omitted. This is simply to correct a clerical mistake.

Seconded by Mr. Ferguson.

Carried.

Section XXV.

Mr. Kunhiraman Nair.—I beg to propose that the following be added at the end of the section :

“and on failure of the person to attend on the date fixed without any lawful excuse for such failure, the court may order the bond to be forfeited.

The provisions of chapter XL of the Code of Criminal Procedure shall, so far as they can be made applicable, apply to recognizances taken under this section.”

The amendment adopted at the last meeting merely empowers the Court to take recognizance bonds. Power to enforce them is obviously necessary and hence this amendment.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section 201 of the Code.

Mr. Dharmaraja Iyer.—I beg to propose that the following be added at the end of the section :

“A court of first instance may also, in its discretion, amend the decree of the appellate court in case of confirmation, in the manner provided in the last preceding clause.”

As the law now stands, it is necessary for the parties to undergo the expense and trouble of resorting to the appellate court even for rectifying clerical or arithmetical errors in appellate decrees. As a rule, such inaccuracies are discovered at the time of executions before the court of first instance and I have ample experience of unnecessary delay and expense to the parties owing to the want of a provision enabling the original courts to correct such errors in appellate decrees. The amendment I propose refers only to decrees confirmed in appeal, in which case there can be no objection to granting the power to the court of first instance. A discretion is also given to such courts in this matter. The amendment, if carried, will come in as section XXXII of the Bill, the numbers of the subsequent sections being altered accordingly.

Seconded by Mr. Padmanabha Menon.

Mr. Kunhiraman Nair.—I appreciate the reasons urged by the mover of the amendment but there is a question of principle which deserves to be considered. The jurisdiction of the court of first instance to amend the decree under section 201 is ousted by the confirmation of the decree on appeal, and the court of first instance has no power to amend the decree of the appellate court. As, however, there have been cases in which arithmetical or clerical errors have been discovered in the decrees of original courts confirmed on appeal, especially in the table of costs annexed to decrees for the correction of which the original court is mainly responsible, it may be provided that such arithmetical or clerical errors not affecting the merits of the decree may be amended by the court of first instance, notwithstanding that its decree has been confirmed on appeal. I would suggest therefore that the amendment be worded in the form of a proviso thus :

“Provided that nothing in this section shall be taken to empower a court of first instance to amend its decree when it has been confirmed by an appellate court save to correct any clerical or arithmetical error in the table of costs not affecting the merits of the decree.”

The power to remove any supposed variance with the judgment should not be vested in the lower courts when the decree has been confirmed on appeal.

President.—The amendment proposed by Mr. Dharmaraja Iyer is too wide and might appear to conflict with the well-recognized principle that once a decree has been appealed against, the court of first instance should not interfere in any way with the decree of the appellate court. The wording suggested by Mr. Kunhiraman Nair affirms this principle and contains a saving clause to secure the object aimed at by the amendment.

Mr. Dharmaraja Iyer.—In deference to the opinions expressed, I agree to the course suggested as it fulfils the purpose I have in view. I beg therefore to propose the following in lieu of the amendment originally proposed by me :

Add the following proviso to section 201.

“Provided that nothing in this section shall be taken to empower a court of first instance to amend its decree when it has been confirmed by an appellate court save to correct any clerical or arithmetical error in the table of costs not affecting the merits of the decree.”

Seconded by Mr. Kunhiraman Nair.

Carried.

Section 304 of the Code.

Mr. Dharmaraja Iyer.—I beg to propose that “3 P. M.” be substituted for the words “the court closes” in line 2 of this section. The object of the amendment is to restrict the time for the payment of the balance of purchase money on the 15th day after auction. The wording in the section “before the court closes” makes it incumbent on courts to accept payment till a late hour. This was all right when the payment had to be made into court. But since the introduction of the cheque and chellan system, much inconvenience is felt in this matter. It often happens that by the time a chellan is applied for and obtained and money taken to the revenue treasury, the latter is closed for the day and unless the section is amended, serious difficulties are likely to occur. The amendment therefore seeks to limit the time up to 3 P. M., which, I am sure, will admit of a chellan being obtained and money paid before the revenue treasury closes for the day.

Seconded by Mr. Padmanabha Menon.

Mr. Kunhiraman Nair.—There is no doubt some inconvenience to the parties and to the revenue treasuries when payments have to be made on the 15th day after the auction. In some places, Krishnapurom for instance, the court-house is about 7 or 8 miles distant from the revenue treasury and parties have to travel all the distance after obtaining a chellan from the court. I am not sure if by limiting the time to 3 P. M. all this inconvenience could be removed. It has also to be borne in mind

that, as the law now stands, parties are allowed full 15 days for paying the balance of the purchase money and any limitation in the manner proposed might be viewed as a hardship to some extent. I would therefore suggest that if an hour is to be specified, one more day be allowed to the parties so that there may be no room for complaint on the score of hardship to the parties.

After some discussion, Mr. Dharmaraja Iyer proposed in lieu of the original amendment that section 304 be recast as follows:—

“The full amount of purchase money shall be paid by the purchaser before 3 P. M. on the sixteenth day after the sale of the property, exclusive of such day, or, if the sixteenth day be a Sunday or other holiday, then on the first office day after the sixteenth day before 3 P. M.”

Seconded by Mr. Nagam Aiya.

Carried.

Section XLIX.

Mr. Kunhiraman Nair.—I beg to propose that the following be added at the end of the section:

“and substitute “such” for “the” in line 6 and “court” for “courts” in line 7 and omit the words “of such District” in line 7.”

This is a verbal amendment consequent on the amendment passed at the last meeting.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section LII.

Mr. Kunhiraman Nair.—I beg to propose that the ‘Explanation’ to this section be omitted. The Explanation is unnecessary in view of the definition adopted at the last meeting (Vide section III of the Bill).

Seconded by Mr. Ferguson.

Carried.

Section LXIV.

Mr. Kunhiraman Nair.—I beg to propose that this section be omitted. The reason for this amendment is the same as for the one just carried.

Seconded by Mr. Dharmaraja Iyer.

Carried.

Section LXVIII.

Mr. Kunhiraman Nair.—I beg to propose that the words “for purposes of limitation” be inserted between “have” and “the” in line 10. These words occur in section XII and are equally necessary in this section to make the wording explicit.

Seconded by Mr. Nagam Aiya.

Carried.

Section LXX.

Mr. Kunhiraman Nair.—I beg to propose that the following clause be added to this section:

“(33) Orders under section 163 directing forfeiture of recognizances.”

This is consequential on the amendment already passed in section XXV.

Seconded by Mr. Dharmaraja Iyer.

Carried.

The Council adjourned at 4. 30. P. M.

K. KRISHNASWAMY RAO,
President.